

**Steve Massey**  
**Deposition Transcript**  
**Excerpts and Exhibits**

STEPHEN MASSEY

CONFIDENTIAL  
ATTORNEY'S EYES ONLY

October 3, 2005

1 there's some way you can answer the question  
 2 without revealing any communications, for example,  
 3 if some discussions were had during a communication  
 4 with in-house counsel or outside counsel, I would  
 5 consider that to be privileged. If you had a  
 6 communication with some employee of Vision outside  
 7 of any communication with an attorney, to the  
 8 extent you weren't discussing what the attorney  
 9 said, you can answer the question to that extent.  
 10 So just to clarify.

11 THE WITNESS: The decision was made  
 12 by several executives on advice from the attorney.

13 Q. (BY MR. BERNDT) And who were those  
 14 executives?

15 A. Nicolaas Vlok, Alan Arnold, Tim Keithahn  
 16 and myself.

17 Q. And when did you make the decision to  
 18 impose the Vision-imposed restrictions?

19 A. I don't know the exact date but it was  
 20 very quickly after the negotiations for an  
 21 agreement broke down. Actually, a little bit more  
 22 specific, it was right after the TRO was lifted.

23 Q. In the days after the TRO was lifted?

24 A. Yes.

25 Q. The day after the TRO was lifted?

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1 I can remember would have been with the same  
 2 executives with attorney present.  
 3 Q. (BY MR. BERNDT) If Lakeview dropped its  
 4 lawsuit against Mr. Robinson, would the  
 5 Vision-imposed restrictions on Mr. Robinson's  
 6 activities continue?

7 MR. LANCILOTTI: Object to the form of  
 8 the question as calls for speculation. You can  
 9 answer over that.

10 THE WITNESS: I can't speak for the  
 11 other executives. From my perspective, yes.

12 Q. (BY MR. BERNDT) Have you been involved in  
 13 communications regarding who would monitor  
 14 Mr. Robinson's compliance with the Vision-imposed  
 15 restrictions?

16 (The record was read as requested.)

17 MR. LANCILOTTI: Again, object to the  
 18 form of the question to the extent that it requires  
 19 you to reveal any attorney/client communications.  
 20 I would instruct you not to answer to that extent,  
 21 but outside of that, you can answer the question.

22 THE WITNESS: Yes. I've had  
 23 discussions with Kristine Brooks, counsel, and I  
 24 believe in that discussion, Tim Keithahn was  
 25 involved also in that discussion.

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1 A. I don't know that it was that quickly. It  
 2 was a number of days, but it wasn't very long.  
 3 Q. Who has the authority to lift the  
 4 Vision-imposed restrictions on Mr. Robinson's  
 5 activities?

6 MR. LANCILOTTI: Object to the form of  
 7 the question as to speculation. You can answer  
 8 over that.

9 THE WITNESS: Nicolaas Vlok or Alan  
 10 Arnold. I don't think anybody else would be  
 11 authorized to do that.

12 Q. (BY MR. BERNDT) Do you have the authority  
 13 to lift or alter the Vision-imposed restrictions on  
 14 Mr. Robinson's activities?

15 A. No.

16 Q. Have you had any discussions with anyone  
 17 regarding the duration of the Vision-imposed  
 18 restrictions on Mr. Robinson's activities?

19 MR. LANCILOTTI: Object to the form of  
 20 the question to the extent that it calls for  
 21 attorney/client that would require you to divulge  
 22 attorney/client communications. I would instruct  
 23 you not to answer with that respect, outside of  
 24 that, you can answer the question.

25 THE WITNESS: My only discussion that

1 Q. (BY MR. BERNDT) Is that the only  
 2 discussion you've had regarding who would monitor  
 3 Mr. Robinson's compliance with the Vision-imposed  
 4 restrictions?

5 A. To my memory, yes.

6 Q. And how many discussions did you have  
 7 regarding who would monitor Mr. Robinson's  
 8 compliance with the Vision-imposed restrictions?

9 A. At least two that I can remember.

10 Q. Was Ms. Brooks involved in all of those  
 11 discussions?

12 A. Yes.

13 Q. To your knowledge, is anyone at Vision  
 14 reviewing Mr. Robinson's e-mails for compliance  
 15 with Vision-imposed restrictions?

16 MR. LANCILOTTI: Object to the form of  
 17 the question to the extent that it's been asked and  
 18 answered previously. You can answer over that.

19 THE WITNESS: I do not know.

20 Q. (BY MR. BERNDT) Do you know if anyone is  
 21 reviewing Mr. Robinson's phone records for  
 22 compliance with the Vision-imposed restrictions?

23 A. I don't know.

24 Q. To some extent you're relying on  
 25 Mr. Robinson's integrity and honesty to achieve

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<p style="text-align: right;">Page 78</p> <p>1 compliance with the Vision-imposed restrictions; is 2 that correct? 3 A. Yes. 4 Q. You are aware that Mr. Robinson lied to a 5 number of people at Lakeview about his intention to 6 join Vision, correct? 7 A. Yes. 8 Q. How do you know that? 9 A. Mr. Robinson shared that with me in 10 conversations. 11 Q. When was the first time Mr. Robinson 12 shared with you that he had lied to Vision about 13 his intention of joining Lakeview – to join 14 Vision? 15 A. Shortly before he joined Vision. I don't 16 know the exact date or the exact timeframe, but 17 within a week or two before he joined Vision. 18 Q. How did he share that with you? 19 A. Via telephone call. 20 Q. Did Mr. Robinson call you or did you call 21 him? 22 A. I don't remember. 23 Q. What did you say to him when you learned 24 that he was going to lie to Lakeview? 25 MR. LANCILOTTI: Object to the form of</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. Well, what was your response then? 2 A. I don't remember my exact response then. 3 Q. Do you remember anything about your 4 response then? 5 A. Not in detail. Not in detail. 6 Q. I didn't ask for details. Do you remember 7 generally your response to Mr. Robinson when he 8 told you that he was going to lie to Lakeview? 9 MR. LANCILOTTI: Again, I object to 10 the form of the question. It's the same issue that 11 we had before. 12 MR. BERNDT: Yeah, I'll rephrase. 13 Q. (BY MR. BERNDT) Do you remember generally 14 about your response to Mr. Robinson when he said he 15 had lied to Lakeview? 16 A. I don't remember generally or 17 specifically. I can tell you my feeling was that 18 it's a shame that it had to happen. But I left it 19 to his discretion and I agreed with it. 20 Q. Did you just testify that you agreed with 21 Mr. Robinson's decision to lie to Lakeview? 22 A. Yes. 23 Q. And did you agree with it before he left 24 Lakeview? 25 A. Yes.</p>
<p style="text-align: right;">Page 79</p> <p>1 the question as -- I think it misstates the record 2 and implies facts not in evidence that he had told 3 him -- or he had already lied -- or that he had not 4 yet lied when he told Mr. Massey. I don't think 5 the timing is there. 6 MR. BERNDT: That's fine. Let me 7 rephrase. 8 Q. (BY MR. BERNDT) What did you say to 9 Mr. Robinson when you learned that Mr. Robinson had 10 lied to Lakeview? 11 A. I don't remember the exact response. 12 Q. Do you remember generally what you said to 13 Mr. Robinson about his lies to Lakeview? 14 A. We did not discuss it at length. My 15 response, I assume, would be the same as today. 16 It's that it's a shame it has to happen. But 17 that's the way it was. 18 Q. Do you remember anything else about your 19 response to Mr. Robinson about his lies to 20 Lakeview? 21 A. No. Didn't discuss it that much. 22 Q. So you told Mr. Robinson it's a shame it 23 has to happen? 24 A. No, I did not. No, I did not tell him 25 that. That is my response today.</p>	<p style="text-align: right;">Page 81</p> <p>1 Q. And you agreed today that -- with 2 Mr. Robinson's decision to lie to Lakeview? 3 A. Repeat the question. 4 (The record was read as requested.) 5 THE WITNESS: Yes. 6 Q. (BY MR. BERNDT) Do you believe that 7 Mr. Robinson's decision to lie to his colleagues at 8 Lakeview was unethical? 9 MR. LANCILOTTI: Object to the form of 10 the question as to relevance. You can answer over 11 that. 12 THE WITNESS: No. Due to the 13 circumstances, no. 14 Q. (BY MR. BERNDT) If Mr. Robinson testified 15 that his decision to lie to his colleagues at 16 Lakeview was unethical, would you disagree with 17 Mr. Robinson? 18 A. Yeah. 19 Q. Do you think Mr. Robinson's lies to his 20 colleagues at Lakeview show dishonesty? 21 A. To the extent of the lie itself, yes. 22 Q. Mr. Robinson was nervous that a rumor was 23 going to leak out that he was going to join Vision 24 before he left Lakeview, right? 25 A. Yes.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q. And he shared that with you?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know why Mr. Robinson was concerned</p> <p>4 that his job with Vision would leak to his</p> <p>5 colleagues at Lakeview?</p> <p>6 THE WITNESS: Could you repeat the</p> <p>7 question?</p> <p>8 (The record was read as requested.)</p> <p>9 THE WITNESS: Do I know why he was</p> <p>10 concerned? I'm going to go from high level memory</p> <p>11 again. I don't remember details. When he</p> <p>12 resigned, there were some rumors about what he was</p> <p>13 going to do, and I think that's where the first</p> <p>14 concern came up.</p> <p>15 Q. (BY MR. BERNDT) And what were those</p> <p>16 concerns?</p> <p>17 MR. LANCIOGLI: Object to the form of</p> <p>18 the question to the extent that it calls for</p> <p>19 speculation. You can answer over that.</p> <p>20 THE WITNESS: The conversations I had</p> <p>21 with Eric were that he was extremely concerned that</p> <p>22 it would disrupt his sales group and draw their</p> <p>23 focus away from what they were supposed to be doing</p> <p>24 and felt it was not productive for them.</p> <p>25 Q. (BY MR. BERNDT) Did you agree with</p>	<p style="text-align: right;">Page 84</p> <p>1 there couldn't be an announcement before he joined</p> <p>2 Vision, correct?</p> <p>3 A. No.</p> <p>4 Q. Are you sure about that?</p> <p>5 A. There was an e-mail that went out that</p> <p>6 they were going to make an announcement, and I sent</p> <p>7 an e-mail back and said, Do not make the</p> <p>8 announcement. They didn't ask me. I responded to</p> <p>9 that proactively.</p> <p>10 Q. Were there further questions about why</p> <p>11 there couldn't be an announcement from Vision</p> <p>12 employees?</p> <p>13 A. Not to my recollection, no.</p> <p>14 Q. Did Mr. Robinson call you in late</p> <p>15 April 2005 and express concern that his intention</p> <p>16 to join Vision had leaked.</p> <p>17 A. I don't remember the exact timing, but</p> <p>18 yes, there was a call in that frame.</p> <p>19 Q. What did he say to you?</p> <p>20 A. He said that he had -- let's see if I can</p> <p>21 remember correctly. He had been called by a Vision</p> <p>22 employee and the employee had said that the rumor</p> <p>23 around Lakeview headquarters was that he had gone</p> <p>24 to Vision or was going to Vision.</p> <p>25 Q. He was called by a Vision employee?</p>
<p style="text-align: right;">Page 83</p> <p>1 Mr. Robinson not to send an announcement of his</p> <p>2 hiring by Vision till after he left Lakeview?</p> <p>3 A. Yes.</p> <p>4 Q. And you had made that agreement on behalf</p> <p>5 of Vision, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And at that time, you knew that he had</p> <p>8 lied to Lakeview about his intention to join</p> <p>9 Vision?</p> <p>10 A. Yes.</p> <p>11 Q. You knew at that point that if Lakeview</p> <p>12 learned that he was going to join Vision, that</p> <p>13 Mr. Robinson would be forced to immediately leave</p> <p>14 Lakeview, correct?</p> <p>15 A. Yes. To qualify that, I didn't know that</p> <p>16 for a fact, but I certainly would have guessed that</p> <p>17 to be the way it would be.</p> <p>18 Q. That isn't the normal procedure at Vision,</p> <p>19 is it? Normally an announcement goes out about a</p> <p>20 new hire before they join Vision, correct?</p> <p>21 A. Not by my instruction. My announcements</p> <p>22 go out after they start, not before. It is --</p> <p>23 Vision has in the past made some announcements</p> <p>24 before.</p> <p>25 Q. In fact, Vision employees asked you why</p>	<p style="text-align: right;">Page 85</p> <p>1 A. I'm sorry. A Lakeview employee.</p> <p>2 Q. Did he say who that employee was?</p> <p>3 A. Yes.</p> <p>4 Q. And who was that?</p> <p>5 A. Bob Johnson.</p> <p>6 Q. What did you say to him?</p> <p>7 A. My general response was that I have no</p> <p>8 idea how it would have gotten to Bob Johnson, that</p> <p>9 I was not aware of anybody talking to anybody at</p> <p>10 Lakeview, and that we're a very limited number of</p> <p>11 people at Vision that even knew that he was coming</p> <p>12 onboard, and it was a mystery to me how it got out</p> <p>13 if it really got out.</p> <p>14 Q. Did you tell Mr. Robinson that you would</p> <p>15 investigate whether the rumors had come from</p> <p>16 Vision?</p> <p>17 A. Something to that effect, yes.</p> <p>18 Q. Did you investigate whether the rumors had</p> <p>19 come from Vision?</p> <p>20 A. Yes.</p> <p>21 Q. What did you do to investigate?</p> <p>22 A. I called the people that I knew were aware</p> <p>23 of his being hired, quizzed their communications</p> <p>24 with other employees of Vision and any</p> <p>25 communications outside of Vision.</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. Who did you call?  2 A. Cathleen Keene, the director of human  3 resources, Tim Keithahn, Alan Arnold, Don Scott.  4 I'm not sure that I contacted one of the other  5 people in human resources or whether I just relied  6 on Cathy Keene. I don't remember.  7 Q. Did anyone say that they had communicated  8 to anyone outside Vision the fact that Mr. Robinson  9 was joining Vision?  10 A. No. Nobody admitted to me that they had  11 communicated outside of Vision.  12 Q. Did Mr. Robinson tell you that he was  13 disturbed by the rumors?  14 A. I don't know if disturbed was the word but  15 he was concerned.  16 Q. Did he accuse you of spreading the rumor?  17 A. No.  18 Q. Allan Campbell also lied about leaving  19 Lakeview, correct?  20 MR. LANCILOTTI: Object to the form of  21 the question as to relevance, and I think if you're  22 going to go into questions about Allan Campbell  23 that are not related to this litigation, and again,  24 this would be along the same lines as when you were  25 asking Mr. Massey questions about his involvement</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. (BY MR. BERNDT) In fact, in the same  2 e-mail when you instructed HR not to announce  3 Mr. Robinson's employment at Vision, you asked HR  4 not to announce Mr. Campbell's employment with  5 Vision, correct?  6 A. I don't remember specifically but that's  7 possible.  8 Q. Mr. Campbell and Mr. Robinson left  9 Lakeview at about the same time, correct?  10 A. No. Memory is that -- I don't know the  11 exact date that Mr. Campbell left Lakeview.  12 Q. Did Mr. Robinson ask you not to send an  13 announcement that he was joining Vision?  14 A. No. That was my decision.  15 Q. And you had told Mr. Robinson that you  16 wouldn't send an announcement that he was joining  17 Vision, correct?  18 A. Prior to his coming onboard, yes.  19 Q. And you told HR that you actually had an  20 agreement with Mr. Robinson not to send an  21 announcement, correct?  22 A. That's possible; yes.  23 Q. Mr. Robinson was worried about his  24 contractual obligations to Lakeview, correct?  25 MR. LANCILOTTI: Object to the form of</p>
<p style="text-align: right;">Page 87</p> <p>1 in iTera, I think it's being asked for an improper  2 purpose and I would suggest that we call the judge  3 and see if he'll allow us to go -- allow you to go  4 into questions about Allan Campbell. I don't know  5 if you're intending on doing that now, but if you  6 were, I'd instruct the witness not to answer.  7 MR. BERNDT: So you're objecting  8 based on relevance again.  9 MR. LANCILOTTI: Relevance and I think  10 it's being asked for an improper purpose. Has  11 nothing to do with this lawsuit.  12 MR. BERNDT: Okay. I'll make my  13 record then.  14 Q. (BY MR. BERNDT) Are you following your  15 counsel's instruction not to answer?  16 A. Yes.  17 Q. Okay. Vision and Allan Campbell also  18 agreed there would be no announcement about his  19 joining Vision, correct?  20 MR. LANCILOTTI: Same objection.  21 MR. BERNDT: Same instruction?  22 MR. LANCILOTTI: Same everything, yes.  23 I mean, questions with regard to Allan Campbell,  24 yes.  25 MR. BERNDT: Okay.</p>	<p style="text-align: right;">Page 89</p> <p>1 the question.  2 MR. BERNDT: Let me rephrase,  3 actually.  4 Q. (BY MR. BERNDT) Prior to Mr. Robinson's  5 leaving Lakeview, Mr. Robinson was worried about  6 his contractual obligations to Lakeview, correct?  7 MR. LANCILOTTI: Object to the form of  8 the question, calls for speculation as to what  9 Mr. Robinson was worried about. You can answer  10 over that.  11 THE WITNESS: He was concerned.  12 Q. (BY MR. BERNDT) And how do you know he  13 was concerned?  14 A. He voiced -- he voiced an opinion and he  15 thought he should contact counsel and get advice.  16 Q. When was that?  17 A. I don't know exactly when that occurred.  18 It had to have been sometime in late 2004.  19 Q. Do you know if Mr. Robinson contacted  20 counsel?  21 A. He told me that he did.  22 Q. Did Mr. Robinson engage his own counsel or  23 did he contact Vision's counsel?  24 MR. LANCILOTTI: Object. Calls for  25 speculation. You can answer over that.</p>

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<p>1                   MR. LANCILOTTI: Objection to the 2 extent it calls for speculation. 3                   MR. BERNDT: Let me rephrase. 4                   Q. (BY MR. BERNDT) Why did Mr. Robinson tell 5 you that he was turning down Vision's employment 6 offer? 7                   MR. LANCILOTTI: Same objection, 8 speculation. 9                   THE WITNESS: He told me it was not 10 the right decision for he and his family at that 11 time. 12                  Q. (BY MR. BERNDT) Did he mention his 13 non-compete agreement with Lakeview during that 14 conversation? 15                  A. No. 16                  Q. How long was that conversation? 17                  A. Not very long. I was disappointed. 18                  Q. Did you try and convince Mr. Robinson that 19 his — that the non-compete agreement with Lakeview 20 wouldn't be a problem? 21                  MR. LANCILOTTI: I'm going to object 22 there to the extent it would require you to reveal 23 any attorney/client communications that you had not 24 only in this case but any other case where you had 25 attorney/client communications regarding that</p>	<p>Page 94</p> <p>1 know. 2                   THE WITNESS: Repeat the question, 3 please. 4                   (The record was read as requested.) 5                   MR. LANCILOTTI: Same objection. 6                   THE WITNESS: I don't think so, no. 7                   Q. (BY MR. BERNDT) Well, what did you 8 discuss during that conversation? 9                   MR. LANCILOTTI: Object to the form of 10 the question to the extent it requires you to 11 reveal any attorney/client communications and ask 12 you not to answer that. The reason I'm making that 13 objection, Will, now is that this is Mr. Robinson's 14 privilege to waive, and he — to the extent he 15 knows if there was a relationship between Kristine 16 Brooks and attorney and Eric Robinson, he's 17 answered that, but he's not sure. I don't want to 18 take the chance of waiving that privilege to 19 another witness when there's an attorney/client 20 relationship possibly between Ms. Brooks and 21 Mr. Robinson. 22                  MR. BERNDT: So Dan, you're 23 suggesting there's a possibility that Mr. Robinson 24 engaged Ms. Brooks, Vision's inside counsel, as his 25 attorney?</p>
<p>1                   non-compete in the Lakeview agreement. I instruct 2 you not to answer that question to that extent. 3 Above that you can answer it or beyond that. 4                   THE WITNESS: I decided to take his 5 current Lakeview employment agreement to counsel 6 and to get advice at that point. 7                  Q. (BY MR. BERNDT) And did you then convey 8 that advice to Mr. Robinson? 9                  A. I'm trying to remember the conversations. 10 I assume that I did. That conversation -- when we 11 reviewed the contract and when it came back, that 12 conversation actually, to my memory, had two or 13 three people on the phone at the same time which 14 would have been Tim Keithahn, Kristine Brooks and 15 myself. 16                  Q. And then later did you convey what you 17 discussed with Ms. Brooks and Mr. Keithahn to 18 Mr. Robinson? 19                  A. That conversation had Mr. Robinson on the 20 call. 21                  Q. At that point, was Ms. Brooks representing 22 Mr. Robinson in any way? 23                  MR. LANCILOTTI: Object to the form of 24 the question as it calls for speculation and object 25 as to foundation. You can answer over that if you</p>	<p>Page 95</p> <p>1                   MR. LANCILOTTI: I'm saying to the 2 extent that that could happen, yes, and I'm not 3 going to allow Mr. Massey to waive that privilege. 4                  MR. BERNDT: Are you suggesting that 5 did happen? 6                  MR. LANCILOTTI: I'm saying to the 7 extent it might have happened. I'm not going to 8 allow Mr. Massey to waive that privilege for 9 Mr. Robinson. They were all part of the call, 10 obviously, there was legal advice being asked and 11 delivered to Mr. Robinson. I don't know to the 12 extent Ms. Brooks does work outside of Vision, to 13 the extent she's in private practice as well being 14 in-house, I do not know, and I'm just simply not 15 going to waive it for Mr. Robinson at this time. 16                  Q. (BY MR. BERNDT) All right. Well, 17 Mr. Massey, it sounds like we're going to have to 18 come back and take your deposition again but — 19 So you're following your counsel's 20 instructions? 21                  A. Yes. 22                  Q. So you can't tell me — 23                  MR. BERNDT: You're not going to 24 allow him to tell me anything about that 25 conversation?</p>

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1                   Page 98  
 2                   MR. LANCILOTTI: To the extent that it  
 3                   doesn't involve him to reveal any legal advice that  
 4                   was sought or given in that discussion where  
 5                   Kristine was present, I'm asserting a privilege.

6                   Q. (BY MR. BERNDT) Okay. With that caution,  
 7                   tell me everything you can, Mr. Massey, about that  
 8                   conversation.

9                   A. If we can have five minutes, I will ask  
 10                  what I can and cannot give you. Until I get the  
 11                  advice, I will give no details on the conversation  
 12                  at all.

13                  Q. So you're refusing to answer the  
 14                  question -- pending question until after you confer  
 15                  with counsel?

16                  A. On advice of counsel, yes.

17                  Q. Okay. Generally that's improper,  
 18                  Mr. Massey, but in this case go ahead, I guess, if  
 19                  that's what you're going to do.

20                  MR. LANCILOTTI: So what are we doing?

21                  MR. BERNDT: I guess he wants a  
 22                  break.

23                  (Recess from 11:20 to 11:26)

24                  MR. LANCILOTTI: With respect to the  
 25                  attorney/client issue that we have right now, Will,  
 26                  the concern I have without divulging any

1                   Page 100  
 2                   Kristine Brooks for evaluation, and I don't have a  
 3                   copy of it.

4                   Q. But Mr. Robinson did give you a copy of  
 5                   his Lakeview employment agreement?

6                   MR. LANCILOTTI: Objection; asked and  
 7                   answered.

8                   Q. (BY MR. BERNDT) And when did that happen?

9                   A. I don't remember the timeframe.

10                  Q. But it was prior to the conversations that  
 11                  you had with Kristine Brooks and Ken Keithahn in  
 12                  December 2004?

13                  A. Yes.

14                  Q. What did you tell Mr. Robinson about your  
 15                  conversations with Kristine Brooks and Ken  
 16                  Keithahn?

17                  A. I told him that the -- I have to remember  
 18                  the conversation. I don't remember whether I told  
 19                  him what came out of the conversation or whether  
 20                  Kristine had a conversation with Dan Lanciloti in  
 21                  regards to that conversation. To be honest with  
 22                  you, I don't remember if I had a specific  
 23                  conversation with Eric on that or if that went from  
 24                  Kristine to Dan.

25                  Q. And we're in the December 2004 timeframe,  
 26                  correct?

1                   Page 99  
 2                  attorney/client communications that I had with  
 3                  Mr. Massey is that Mr. Massey did not -- he was  
 4                  confusing the facts as to who was present, and I  
 5                  think he said he thought Eric was present. And I  
 6                  think we've confirmed outside that Eric was not  
 7                  present in those calls. I don't want Mr. Massey to  
 8                  go into communications that he had with Vision  
 9                  Solutions in-house counsel that are privileged and  
 10                 discuss that on the record simply because he is  
 11                 confused about who was present. And I think that  
 12                 we've now confirmed that Eric was not on those  
 13                 calls.

14                  MR. BERNDT: Okay. Let me follow up.

15                  Q. (BY MR. BERNDT) Mr. Massey, was  
 16                  Mr. Robinson included on the calls you had with  
 17                  Kristine Brooks and Ken Keithahn regarding  
 18                  Mr. Robinson's Lakeview employment agreement?

19                  A. No. After confirming with Eric, he was  
 20                  not.

21                  Q. And do you have a copy of Lakeview's  
 22                  employment agreement with Mr. Robinson?

23                  A. No.

24                  Q. Mr. Robinson never gave you a copy of his  
 25                  Lakeview employment agreement?

26                  A. Yes. I gave it to counsel. I gave it to

1                   Page 101  
 2                  A. Yes.

3                  Q. So Mr. Lanciloti was involved in some of  
 4                  these conversations in December 2004?

5                  A. By my memory, yes.

6                  Q. Do you recall any conversations -- let's  
 7                  start over.

8                  Do you recall discussing  
 9                  Mr. Robinson's Lakeview employment agreement with  
 10                 Mr. Robinson at any time?

11                  A. I remember we discussed it. I don't  
 12                 remember the timeframe with which we discussed it,  
 13                 but I remember we discussed it.

14                  Q. Do you recall discussing Mr. Robinson's  
 15                 employment agreement in December 2004?

16                  MR. LANCILOTTI: Object to the form of  
 17                  the question; asked and answered.

18                  THE WITNESS: I don't remember the  
 19                 timeframe.

20                  Q. (BY MR. BERNDT) How many discussions have  
 21                  you had with Mr. Robinson about his Lakeview  
 22                 employment contract?

23                  A. I don't know. One, two.

24                  Q. What do you recall about the conversation  
 25                  or conversations you had with Mr. Robinson about  
 26                  his Lakeview employment contract?



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<p>1 had told him about the Lakeview employment 2 agreement?</p> <p>3 MR. LANCILOTI: Yes or no.</p> <p>4 THE WITNESS: No. No. Not in 5 detail, no.</p> <p>6 Q. (BY MR. BERNDT) Did he tell you generally 7 what his attorney had told him about the Lakeview 8 employment contract?</p> <p>9 A. No. He told me he was comfortable in 10 continuing discussions.</p> <p>11 Q. Is that all he said?</p> <p>12 A. To my recollection, yes.</p> <p>13 Q. And did you have conversations with 14 Mr. Robinson when you discussed what Vision's 15 counsel had told you about Mr. Robinson's Lakeview 16 employment contract?</p> <p>17 MR. LANCILOTI: Again, it's yes or 18 no.</p> <p>19 THE WITNESS: I really don't 20 remember, but my recollection of some conversation, 21 yeah, yes.</p> <p>22 Q. (BY MR. BERNDT) And what did you tell 23 Mr. Robinson that Vision's counsel had told you 24 about Mr. Robinson's Lakeview employment agreement?</p> <p>25 MR. LANCILOTI: Object to the form of</p>	<p>Page 106</p> <p>1 details about whether any provisions of Eric's 2 Lakeview employment contract would be enforceable?</p> <p>3 MR. LANCILOTI: Same objection to the 4 form of the question. Seeks attorney/client 5 information.</p> <p>6 THE WITNESS: We discussed that there 7 were some parts of it that might not be enforceable 8 and some that might be enforceable.</p> <p>9 Q. (BY MR. BERNDT) Which parts did you 10 discuss?</p> <p>11 MR. LANCILOTI: Again, to the extent 12 any of this came from attorney/client 13 communications, I would ask, one, strike that 14 testimony if that came from attorney/client 15 testimony, but also, instruct you not to answer if 16 that's where it came from. If it's from somewhere 17 else other than your communications with counsel, 18 then you can go ahead and answer.</p> <p>19 THE WITNESS: At this point, 20 everything that I had at that point came from 21 counsel.</p> <p>22 Q. (BY MR. BERNDT) And when you say it "came 23 from counsel," it came from Vision's counsel, 24 correct?</p> <p>25 MR. LANCILOTI: Object to the form of</p>
<p>1 the question. Seeks disclosure of information 2 which is protected by the attorney/client 3 privilege. To the extent that your answer would 4 disclose any of those communications, I would 5 instruct you not to answer. If there's anything 6 that was said that goes beyond that then you can 7 answer the question.</p> <p>8 MR. BERNDT: Okay. I think we're 9 going to have to do this one more time.</p> <p>10 Q. (BY MR. BERNDT) Prior to Mr. Robinson 11 leaving Lakeview, did you have conversations with 12 Mr. Robinson about — involving discussions of what 13 Vision's attorneys had told you about 14 Mr. Robinson's Lakeview employment contract?</p> <p>15 MR. LANCILOTI: Could you read that 16 back?</p> <p>17 (The record was read as requested.)</p> <p>18 MR. LANCILOTI: Object to the form of 19 the question, calls for attorney/client privilege 20 information. Instruct you not to answer to the 21 extent you have to divulge any of that information.</p> <p>22 THE WITNESS: I told Eric that we 23 were willing to continue conversations based on the 24 attorney's advice.</p> <p>25 Q. (BY MR. BERNDT) And did you discuss any</p>	<p>Page 107</p> <p>1 the question as vague as to Vision's counsel. You 2 can answer over that.</p> <p>3 THE WITNESS: Came from Kristine 4 Brooks.</p> <p>5 Q. (BY MR. BERNDT) Thank you.</p> <p>6 And these conversations took place 7 before Mr. Robinson left Lakeview, correct?</p> <p>8 A. Yes.</p> <p>9 MR. BERNDT: All right. Dan, I think 10 we're clear?</p> <p>11 MR. LANCILOTI: I think we are.</p> <p>12 MR. BERNDT: And, Dan, just for the 13 record; you're going to object to any further 14 questions about the specifics of what Ms. Brooks 15 told Mr. Massey and then Mr. Massey conveyed to 16 Mr. Robinson, correct?</p> <p>17 MR. LANCILOTI: I'm going to object 18 to any questions that go into or would require 19 Mr. Massey to divulge any communications he had 20 with, I guess, Lakeview counsel and inside and 21 outside counsel, Vision counsel, and Mr. Robinson's 22 counsel. There's been, again, no testimony nor do 23 I think Mr. Massey has the foundation or could lay 24 a foundation as to when any type of joint 25 representation was established or whether there was</p>

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1 a relationship between counsel and Mr. Robinson.  
 2 So based on that, I'm not going to let Mr. Massey  
 3 testify as to communications that are not his  
 4 privilege to waive.

5 Q. (BY MR. BERNDT) Now, you said earlier  
 6 that you understood that Mr. Robinson had engaged  
 7 counsel prior to leaving Lakeview, correct?

8 A. Yes.

9 Q. And was that counsel Mr. Lanciloti?

10 MR. LANCILOTI: Object to the form of  
 11 the question, calls for speculation. You can  
 12 answer over that.

13 THE WITNESS: Initially, no.

14 Q. (BY MR. BERNDT) When did -- if you know,  
 15 when did Mr. Lanciloti begin to represent  
 16 Mr. Robinson?

17 MR. LANCILOTI: Calls for  
 18 speculation.

19 THE WITNESS: I don't know  
 20 specifically.

21 Q. (BY MR. BERNDT) Do you know if  
 22 Mr. Lanciloti began to represent Mr. Robinson prior  
 23 to Mr. Robinson's leaving Lakeview?

24 MR. LANCILOTI: Objection; asked and  
 25 answered. You can answer if you know.

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1 document that's confidential?

2 A. It appears like everything in here is  
 3 confidential.

4 Q. And why is that information confidential?

5 A. It has to do with all of our customer  
 6 lists, amounts payable or receivable due from them,  
 7 type of expense, training, license dollar amount.

8 Pretty confidential.

9 Q. If Vision's competitors had access to any  
 10 of that information, would it give them a  
 11 competitive advantage?

12 THE WITNESS: Repeat.

13 (The record was read as requested.)

14 THE WITNESS: Yes.

15 Q. (BY MR. BERNDT) Is Vision's client list  
 16 confidential to Vision?

17 A. To an extent, yes. There's to an extent,  
 18 no.

19 Q. And how is Vision's client list not  
 20 confidential to Vision?

21 A. As is typical in the industry, many of our  
 22 customer lists are on our website.

23 Q. If that document was revised that only the  
 24 list of customers was listed on the document, would  
 25 that document be confidential?

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1 THE WITNESS: I don't remember the  
 2 timeline that I was aware, so I don't know.

3 Q. (BY MR. BERNDT) Do you know if  
 4 Mr. Robinson engaged any counsel other than  
 5 Mr. Lanciloti?

6 A. I do not know.

7 MR. BERNDT: I'd like to mark as  
 8 Exhibit 2 a document Bates stamped Robinson 627  
 9 through 643.

10 (Exhibit No. 2 marked)

11 Q. (BY MR. BERNDT) Mr. Massey, do you  
 12 recognize Exhibit 2 and the documents attached to  
 13 the e-mail in the first page of Exhibit 2?

14 A. I recognize -- yeah, I do.

15 Q. What is that document?

16 A. It's a listing of the accounts receivable  
 17 for North America accounts.

18 Q. Is any of the information on that document  
 19 confidential?

20 A. Yeah.

21 Q. Which information on that document is  
 22 confidential?

23 A. All of the customer names and all the  
 24 dollar amounts due.

25 Q. Is there any other information on that

1 A. Still to the degree that it had a customer  
 2 listing, yes.

3 Q. And why is that?

4 A. Well, even though some of our customers  
 5 are on the website, some of them are not. And I --  
 6 the fact that somebody wants to go find our  
 7 customer list is not that difficult to do, but I'm  
 8 not going to make it easy.

9 Q. And it's still confidential to Vision?

10 A. Yes. To that extent.

11 Q. Is Vision's pricing to its customers  
 12 confidential to Vision?

13 A. Yes.

14 Q. Are Vision's sales strategies confidential  
 15 to Vision?

16 A. Yes.

17 Q. Are Vision's internal communications  
 18 regarding its customers confidential?

19 A. Yes.

20 Q. Is Vision's information about potential  
 21 prospects confidential?

22 A. Yes.

23 Q. How does Vision maintain the  
 24 confidentiality of its sales information?

25 A. To a large degree, it's with the trust and

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1 A. Yes.  
 2 Q. Does the three year sales plan include  
 3 information about the North America region?  
 4 A. Yes.  
 5 Q. Does the three year sales plan contain  
 6 information regarding particular regions within  
 7 North America?  
 8 A. Yes.  
 9 Q. Does it include projections for sales  
 10 within the particular regions in North America?  
 11 A. Yes.  
 12 Q. When was the three year sales plan  
 13 created?  
 14 MR. LANCILOTTI: Object to the form of  
 15 the question, calls for speculation. You can  
 16 answer if you can.  
 17 THE WITNESS: I can tell you  
 18 generally when it was created. It was created in  
 19 the September/October 2004 timeframe.  
 20 Q. (BY MR. BERNDT) Has it been revised since  
 21 then?  
 22 A. No.  
 23 Q. Is Vision a competitor of Lakeview?  
 24 A. Yes.  
 25 Q. So Lakeview and Vision compete in the same

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1 A. Before I was with Vision.  
 2 MR. BERNDT: We'd like to state on  
 3 the record that we've asked for job descriptions  
 4 for Vice President of Americas repeatedly and this  
 5 is the only document that's been produced.  
 6 MR. LANCILOTTI: I just want to make a  
 7 statement to the – this is what has been produced  
 8 by Vision. I will look into seeing if there is a  
 9 more current version of this, and if there is and  
 10 it's discoverable, I will produce it immediately.  
 11 This is what I've received.  
 12 Q. (BY MR. BERNDT) Mr. Massey, if you look  
 13 at the numbers listed under essential duties and  
 14 responsibilities on Page Vision 1?  
 15 A. Uh-huh.  
 16 Q. Do those duties and responsibilities apply  
 17 to Mr. Robinson's current role?  
 18 A. Yes.  
 19 Q. If you look at the second page under  
 20 education and experience, it states that a vice  
 21 president should have responsibility to deliver at  
 22 least a hundred million annually. Do you see that  
 23 statement?  
 24 A. Uh-huh, yes.  
 25 Q. Is that still a requirement of the

1 geographic markets?  
 2 A. Yes.  
 3 Q. So they sell the same general types of  
 4 products?  
 5 A. There is some overlap, yes.  
 6 Q. Is part of Mr. Robinson's job to help  
 7 Vision compete with its competitors?  
 8 A. Yes. Within his areas of responsibility.  
 9 Q. Including Lakeview?  
 10 A. Yes.  
 11 MR. BERNDT: Let me mark as Exhibit 3  
 12 a document Bates stamped Vision 1 through 3.  
 13 (Exhibit No. 3 marked)  
 14 Q. (BY MR. BERNDT) Do you recognize  
 15 Exhibit 3?  
 16 A. Yes.  
 17 Q. What is it?  
 18 A. Looks like the job description for the VP  
 19 of North America Sales.  
 20 Q. Is this the most current job description  
 21 for the VP for North America Sales?  
 22 A. I don't think so. It was amended to  
 23 include Latin America though. It's now the Vice  
 24 President of Sales Americas.  
 25 Q. When did that amendment occur?

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1 position?  
 2 A. Not to my knowledge.  
 3 Q. Is he required to deliver more or less  
 4 than that in sales?  
 5 A. Less.  
 6 Q. How much less?  
 7 A. About half. Can I qualify it at this  
 8 point?  
 9 Q. Certainly.  
 10 A. We have a hundred million dollar annual  
 11 goal, which is stated in our three year plan. So  
 12 that's probably why it's in this is because that  
 13 was always part of the three year design, was to  
 14 get to a hundred million dollars.  
 15 Q. And does that hundred million dollars  
 16 apply only to North America or to worldwide?  
 17 A. Worldwide.  
 18 Q. When did you first contact Mr. Robinson  
 19 about a possible position at Vision?  
 20 A. I don't remember an exact date. It was in  
 21 the late fall of 2004, late October/November  
 22 timeframe. At that time, the job description I had  
 23 was not for VP of Sales.  
 24 Q. What was your job description at that  
 25 time?

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<p>1 Q. How did you make that offer?  2 A. In writing.  3 Q. Did you send Mr. Robinson a letter?  4 A. Yes. I didn't specifically but human  5 resources did.  6 MR. BERNDT: Again, I'd like to state  7 for the record that the offer of employment from  8 December 2004 has not been produced and we -- it's  9 clearly responsive and we need a copy of it.  10 MR. LANCILOTTI: And I'll just respond  11 that I agree that if it exists it would be  12 responsive, but I don't -- I've asked Vision and I  13 know there was an offer that was made in March that  14 we produced, and I don't know that there was one  15 made in December that was in writing. So to the  16 extent it exists, I've asked for it, Vision has  17 looked to see if they have anything, they've given  18 me the ones that they have. But I'll ask again.  19 Q. (BY MR. BERNDT) Did you send -- so human  20 resources sent the letter to Mr. Robinson?  21 A. Yes.  22 Q. Did you review the letter before it went  23 out?  24 A. Only for the terms, yes.  25 Q. Did you have any conversations with</p>	<p>Page 146</p> <p>1 A. No.  2 Q. How long was this conversation?  3 A. I don't remember.  4 Q. What did Mr. Robinson say about his  5 concerns regarding his family?  6 A. Nothing other than the fact he didn't  7 think that the decision to take the offer was right  8 for him or his family at that time.  9 Q. And did he explain why that was?  10 A. No.  11 Q. Did you ask him why he didn't think it was  12 the right time to take the offer from Vision?  13 A. No. That was personal.  14 Q. And your testimony is you didn't talk  15 about anything else during that conversation?  16 A. Not to my recollection.  17 MR. BERNDT: I'd like to mark as  18 Exhibit 6 a document Bates stamped Vision 61.  19 (Exhibit No. 6 marked)  20 Q. (BY MR. BERNDT) All right. Do you  21 recognize Exhibit 6?  22 A. Yes.  23 Q. What is it?  24 A. It's an e-mail that I sent to Nicolaas  25 Vlok, Alan Arnold, Tim Keithahn and David Wegman in</p>
<p>Page 147</p> <p>1 Mr. Robinson regarding the offer of employment in  2 December?  3 A. Yes.  4 Q. How many conversations?  5 A. Two that I could think of. One in which  6 we reviewed the offer and two in which he declined  7 the offer.  8 Q. What did you say to Mr. Robinson and what  9 did he say to you during the first conversation?  10 A. Don't remember exact details, but in  11 general, we covered the offer letter, the area of  12 responsibilities, reporting structure. Whatever  13 the offer letter had, that's what we discussed.  14 Q. What did you say to Mr. Robinson and what  15 did he say to you during the second conversation  16 with Mr. Robinson?  17 A. He informed me that he didn't think that  18 it was in his interest or his family's interest to  19 make a change at that time and that he regretted it  20 because he and I had talked for some time about  21 wanting to work with each other again but that he  22 thought it was best for him at that time to decline  23 the offer.  24 Q. Did he give any specific reasons as to why  25 he was declining the offer?</p>	<p>Page 149</p> <p>1 regards to Eric's declining the offer.  2 Q. And what date did you send the e-mail?  3 A. December 23rd.  4 Q. What time?  5 A. 6:39 a.m.  6 Q. All right. Can you read the first two  7 paragraphs of the e-mail into the record?  8 A. "Well, I'm afraid our fears have been  9 substantiated. Eric has decided not to join Vision.  10 at this time. I spent two hours on the phone with  11 him last night and he is extremely disappointed  12 that he could not take advantage of this  13 opportunity but he feels the timing for him  14 personally is not right. He has some financial  15 requirements that could not survive a six- to  16 nine-month layoff from work. Granted that is a  17 worst-case scenario, but he doesn't feel he is a  18 position to take the risk at this time.  19 He left the door open though, he is  20 unhappy where he is and he doesn't see himself  21 staying there long term. He just truly fears his  22 non-compete agreement with Lakeview. Who knows, I  23 may talk him into it by the end of the holidays."  24 Q. Okay.  25 MR. LANCILOTTI: Just to clarify for</p>

**From:** Stephen Massey  
**Sent:** Thursday, December 23, 2004 6:39 AM  
**To:** Nicolaas Vlok; Alan Arnold; Tim Keithahn; David Wegman  
**Subject:** Eric Robinson

Well, I'm afraid our fears have been substantiated. Eric has decided not to join Vision at this time. I spend two hours on the phone with him last night and he is extremely disappointed that he could not take advantage of this opportunity, but he feels the timing for him personally is not right. He has some financial requirements that could not survive a 6 to 9 months layoff from working. Granted, that is a worse case scenario, but he doesn't feel he is in a position to take the risk at this time.

He left the door open, though. He is unhappy where he is and he doesn't see himself staying there long term. He just truly fears his non-compete agreement with Lakeview. Who knows, I may talk him into it by the end of the holidays.

I said, I am on a new exercise to find an adequate candidate. I'll keep you informed on my progress. Any suggestions would be greatly appreciated.

Best Wishes for a Happy Holiday Season,

Steve...

h830-981-5428  
e210-865-6133

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